

No. 15804 ✓

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United States  
Court of Appeals  
for the Ninth Circuit

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WARREN A. OTT and MORTGAGE SERVICES  
OF NORFOLK, INC., a Corporation,

Appellants,

vs.

HOME SAVINGS & LOAN ASSOCIATION, a  
Corporation,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

FILED

JUN 27 1958

U.S. DISTRICT COURT



No. 15804

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**United States**  
**Court of Appeals**  
for the Ninth Circuit

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

MAURICE J. HINDIN,  
6505 Wilshire Boulevard,  
Los Angeles 48, California.

For Appellee:

PAUL FITTING,  
139 North Broadway,  
Los Angeles 12, California.





In the United States District Court, Southern  
District of California, Central Division

No. 548-57 Y

WARREN A. OTT and MORTGAGE SERVICES  
OF NORFOLK, INC., a Corporation,

Plaintiffs,

vs.

HOME SAVINGS & LOAN ASSOCIATION, a  
Corporation, and HOWARD F. AHMANSON,

Defendants.

COMPLAINT

(Damages—Breach of Contract)

Plaintiffs complaint of Defendants and allege:

I.

That Plaintiff, Mortgage Services of Norfolk, Inc., is a corporation incorporated under the Laws of the State of Virginia, and maintains its principal place of business within the City of Norfolk, State of Virginia, and now is and at all times mentioned herein has been a citizen and resident of the State of Virginia, and a nonresident of the State of California. That, at all times mentioned herein, the Plaintiff, Warren A. Ott, is a citizen of the State of Virginia, and resides in the City of Norfolk, State of Virginia, and is not a resident or citizen of the State of California.

## II.

That the Defendant, Home Savings & Loan Association, at all [2\*] times mentioned herein, was and is a corporation organized and existing under the Laws of the State of California, and maintains its principal place of business within the City of Los Angeles, State of California, and is a citizen and resident of the State of California, and within the Southern District, Central Division of this Court.

## III.

That the Defendant, Howard F. Ahmanson, at all times mentioned herein, has been and now is a resident and citizen of the State of California, and a resident within the Southern District, Central Division of the above-entitled Court.

## IV.

That the matter in controversy, exclusive of interests and costs, exceeds \$3,000.00.

## V.

That the jurisdiction of this Court is conferred by provisions of Title 28, United States Code, Section 1332.

## VI.

That, on or about the 31st day of December, 1953, the Defendants, and each of them, made and executed an agreement in writing, by the terms of which said agreement the Defendant, Home Savings & Loan Association, a corporation, by and through the Defendant, Howard F. Ahmanson, acting as its President, promised and agreed to purchase from

one Harold L. Shaw, or his nominee, within three (3) years from date thereof, up to Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) worth of permanent real estate loans to be guaranteed under the provisions of the Servicemen's Readjustment Act of 1944, as Amended. Said agreement in writing further provided that the said loans shall have a maturity date of twenty-nine (29) years, and that the purchase price of the said loans was to be at par less seven and one-half (7½%) per cent thereof.

#### VII.

That, on or about the 10th day of November, 1956, the said Harold L. Shaw, by an instrument in writing, designated and appointed the [3] Plaintiffs herein as his nominee under and pursuant to the aforesaid agreement in writing, and did by an instrument in writing assign, set over, transfer and convey unto Mortgage Services of Norfolk, Inc., and Warren A. Ott all of his right, title and interest and all of his rights in and to the aforesaid agreement in writing with the Defendants, as aforesaid, and that at all times since the said 10th day of November, 1956, the Plaintiffs have been and are the owners and holders of all of the right, title and interest of the said Harold L. Shaw in and to the agreement in writing hereinabove set forth.

#### VIII.

That, on or about the 20th day of December, 1956, and within three (3) years from date of execution of the aforesaid agreement in writing, the Plaintiffs

tendered to the Defendants, and each of them, and offered to sell and deliver to the Defendants, and each of them, at par less seven and one-half (7½%) per cent thereof, pursuant to the aforesaid agreement in writing, Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) worth of permanent real estate loans guaranteed under the provisions of the Servicemen's Readjustment Act of 1944, as Amended.

#### IX.

That the Plaintiffs herein fully performed all of the terms and conditions of the aforesaid agreement in writing. That the Defendants, and each of them, in breach of the agreement, as aforesaid, failed and refused to purchase from the Plaintiffs the said Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) worth of permanent real estate loans, or any part thereof, and have, at all times since the said 20th day of December, 1956, continued to fail and refuse to purchase the said real estate loans from the Plaintiffs herein.

#### X.

That, as a direct and proximate result of the acts of the Defendants, and each of them, as aforesaid, the Plaintiffs herein have been damaged in the sum of \$237,135.80.

Wherefore, Plaintiffs pray: [4]

1. For judgment against the Defendants, and each of them, in the sum of \$237,135.80, together with interest from date of filing of this action.

2. For costs of suit.

3. For such other and further relief as to the Court may seem meet and just in the premises.

HINDIN and SUSMAN, and  
EDWIN J. REGAN,

By /s/ MAURICE J. HINDIN,  
Attorneys for Plaintiffs.

Duly verified.

[Endorsed]: Filed April 30, 1957. [5]

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[Title of District Court and Cause.]

MINUTES OF THE COURT

September 9, 1957

Present: Hon. Leon R. Yankwich, District Judge;  
Counsel for Plaintiff: Maurice Hindin,  
Esq. ;  
Counsel for Defendant: Paul Fitting, Esq.

Proceedings: Hearings.

(1) Defendant Howard F. Ahmanson's motion for summary judgment.

(2) Plaintiff's motion to strike 1st & 3rd affirmative defenses from answer.

(3) Defendant Home Savings' motion for summary judgment.

Attorney Hindin for plaintiff moves to amend complaint by interlineation. Court denies said motion but grants leave to file amended complaint.

Both sides argues various motions.

It Is Ordered that:

(1) Defendant Howard F. Ahmanson's motion for summary judgment be granted and that his attorney prepare findings and order.

(2) Plaintiff's motion to strike, etc., be denied.

(3) Defendant Home Savings' motion for summary judgment be denied.

JOHN A. CHILDRESS,  
Clerk.

By /s/ L. CUNLIFFE,  
Deputy Clerk. [7]

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[Title of District Court and Cause.]

AMENDED COMPLAINT  
(Damages—Breach of Contract)

Leave of Court having heretofore been granted Plaintiffs to file an Amended Complaint, Plaintiffs complain of the Defendant and allege:

I.

That Plaintiff, Mortgage Services of Norfolk, Inc., is a corporation incorporated under the Laws of the State of Virginia, and maintains its principal place of business within the City of Norfolk, State of Virginia, and now is and at all times mentioned herein has been a citizen and resident of the State of Virginia, and a nonresident of the State of Cali-



ifornia. That, at all times mentioned herein, the Plaintiff, Warren A. Ott, is a citizen of the State of Virginia, and resides in the City of Norfolk, State of Virginia, and is not a resident or citizen of the State of California.

## II.

That the Defendant, Home Savings & Loan Association, at all [8] times mentioned herein, was and is a corporation organized and existing under the Laws of the State of California, and maintains its principal place of business within the City of Los Angeles, State of California, and is a citizen and resident of the State of California, and within the Southern District, Central Division, of this Court.

## III.

That the matter in controversy, exclusive of interests and costs, exceeds \$3,000.00.

## IV.

That, at all times mentioned herein, Howard F. Ahmanson was the duly elected, acting and qualified President of Defendant, Home Savings & Loan Association, and at all times herein acted within the scope of his employment and in the course of his employment as such President of the Defendant.

## V.

That the jurisdiction of this Court is conferred by provisions of Title 28, United States Code, Section 1332.

## VI.

That, on or about the 31st day of December, 1953, the Defendant, Home Savings & Loan Association, a corporation, acting by and through one Howard F. Ahmanson, its President, made and executed an agreement in writing, by the terms of which said agreement the said Defendant promised and agreed to purchase from one Harold L. Shaw, or his nominee, within three (3) years from date thereof, up to Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) worth of permanent real estate loans to be guaranteed under the provisions of the Servicemen's Readjustment Act of 1944, as Amended. Said agreement in writing further provided that the said loans shall have a maturity date of twenty-nine (29) years, and that the purchase price of the said loans was to be at par less seven and one-half (7½%) per cent thereof. A copy of said agreement is attached hereto and incorporated herein by reference thereto and is marked "Exhibit A." [9]

## VII.

That, on or about the 10th day of November, 1956, the said Harold L. Shaw, by an instrument in writing, designated and appointed the Plaintiffs herein as his nominee under and pursuant to the aforesaid agreement in writing, and did by an instrument in writing assign, set over, transfer and convey unto Mortgage Services of Norfolk, Inc., and Warren A. Ott all of his right, title and interest and all of his rights in and to the aforesaid agreement in writing with the Defendant, as aforesaid,



and that at all times since the said 10th day of November, 1956, the Plaintiffs have been and are the owners and holders of all of the right, title and interest of the said Harold L. Shaw in and to the agreement in writing hereinabove set forth. A copy of the said instrument in writing is attached hereto and incorporated herein by reference thereto and marked "Exhibit B."

### VIII.

That, on or about the 5th day of December, 1956, Plaintiffs herein notified the Defendant of their aforesaid nomination and assignment.

### IX.

That, between the said 5th day of December, 1956, and the 8th day of January, 1957, the Defendant recognized, acknowledged and dealt with the Plaintiffs herein as the assignee of Harold L. Shaw, and in reliance thereon Plaintiffs herein changed their position to their detriment and damage as is hereinafter set forth.

### X.

That, on or about the 20th day of December, 1956, and within three (3) years from date of execution of the aforesaid agreement in writing, the Plaintiffs tendered to the Defendant and offered to sell and deliver to the Defendant, at par less seven and one-half (7½%) per cent thereof, pursuant to the aforesaid agreement in writing, Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) worth of permanent real estate loans having a maturity date of twenty-nine (29) years and guaranteed

under the provisions of the Servicemen's Readjustment Act of 1944, as Amended. That on the same day Plaintiffs herein did deliver to the Defendant an instrument in writing, [10] a copy of which said instrument is attached hereto and is incorporated herein by reference thereto and is marked "Exhibit C."

### XI.

That the Plaintiffs herein fully performed all of the terms and conditions of the aforesaid agreement in writing, dated December 31, 1953, a copy of which is attached hereto and incorporated herein by reference thereto and is marked "Exhibit A," and at all times mentioned herein they have been and were ready, able and willing to fully perform all the terms and conditions of the aforesaid agreement.

### XII.

That the Defendant, in breach of the agreement, as aforesaid, failed and refused to purchase from the Plaintiffs the said Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) worth of permanent real estate loans, or any part thereof, and has, at all times since the said 20th day of December, 1956, continued to fail and refuse to purchase the said real estate loans from the Plaintiffs herein.

### XIII.

That, as a direct and proximate result of the acts of the Defendant, as aforesaid, the Plaintiffs herein have been damaged in the sum of \$237,135.80.

Wherefore, Plaintiffs pray:

1. For judgment against the Defendant in the sum of \$237,135.80, together with interest from date of filing of this action.

2. For costs of suit.

3. For such other and further relief as to the Court may seem meet and just in the premises.

HINDIN AND SUSMAN, and  
EDWIN J. REGAN,

By /s/ MAURICE J. HINDIN,

Attorneys for Plaintiffs. [11]

EXHIBIT A

Home Savings and Loan Association  
Main Office: 800 South Spring Street,  
Los Angeles 14, California, TRinity 7991

December 31, 1953.

Mr. Harold L. Shaw,  
650 South Spring Street,  
Los Angeles 14, California.

Dear Mr. Shaw:

This letter is to serve as a binding commitment, for a period of three years from date hereof, upon Home Savings and Loan Association to make to you or your nominee the following loans:

(1) Two and one-half million dollars (\$2,500,000) in permanent real estate loans to be guaranteed under the provisions of the Servicemen's Readjustment Act of 1944, as Amended. Said loans shall have a maturity date of twenty-nine years and call for no down payment, and Home shall, not make any service charge therefor, but shall be entitled to the one per cent (1%) charge to be collected from the Veteran purchaser.

(2) In addition to the above, Home agrees to purchase from you or your nominee up to Seven and One-half Million Dollars (\$7,500,000) of permanent real estate loans to be guaranteed under the provisions of the Servicemen's Readjustment Act of 1944, as Amended. Said loans shall have a maturity date of twenty-nine years. The purchase price of said loans to be at par less seven and one-half per cent (7½%) thereof.

Yours very truly,

HOME SAVINGS AND LOAN  
ASSOCIATION,

/s/ HOWARD F. AHMANSON,  
President. [12]

## EXHIBIT B

Designation of Nominee and Assignment  
of Commitment

For and Inconsideration of Ten (\$10.00) Dollars and other good and valuable consideration, I, the undersigned Harold L. Shaw, herewith designate and appoint Mortgage Services of Norfolk, Inc., and Warren A. Ott, of Norfolk, Virginia, as my Nominee under that certain commitment executed December 31, 1953, by Home Savings & Loan Association, by Howard Ahmanson, President, to the undersigned, a copy of which said loan commitment is attached hereto.

I, the undersigned Harold L. Shaw, herewith assign, set over and transfer unto Mortgage Services of Norfolk, Inc., and Warren A. Ott, as my nominee, all of my right, title and interest in and to the aforesaid commitment and all of my rights thereunder.

Dated: 10th day of November, 1956.

/s/ HAROLD L. SHAW.

Foregoing Assignment Is Accepted:

Dated: November 15, 1956.

MORTGAGE SERVICES OF  
NORFOLK, INC.,

By /s/ WARREN A. OTT,  
President.

/s/ WARREN A. OTT.

## EXHIBIT C

Mortgage Services of Norfolk, Inc.  
Granby at Olney Road, Norfolk 10, Virginia

December 20, 1956.

Home Savings & Loan Association  
9245 Wilshire Boulevard  
Beverly Hills, California

Attention: Mr. Kenneth D. Childs

Gentlemen:

This will serve to advise you that Mortgage Services of Norfolk, Inc., and Warren A. Ott of Norfolk, Virginia, have been designated as nominee by Mr. Harold L. Shaw under the commitment dated December 31, 1953, executed by Home Savings & Loan Association to Mr. Harold L. Shaw, and we are pleased to advise you that we hold an assignment from Mr. Shaw of all of his rights as his nominee under the aforesaid commitment of Home Savings & Loan Association.

We herewith accept the offer and commitment of Home Savings & Loan Association of December 31, 1953, to purchase loans described in Paragraph (2) of the said commitment in the total aggregate amount of \$7,500,000.00, to be purchased by Home Savings & Loan Association, at par less 7.5% thereof.

Pursuant to Paragraph (2) of the commitment of December 31, 1953, executed by Home Savings & Loan Association by Mr. Howard Ahmanson, as President, to Mr. Harold L. Shaw, we are pleased



to formally tender to you \$7,500,000.00 worth of permanent real estate loans guaranteed under provisions of the Servicemen's Readjustment Act of 1944, as Amended, and as specified in the said commitment.

We are ready, able and willing to make immediate delivery of these loans to Home Savings & Loan Association, and we request immediate delivery instructions as to place of delivery of the said loans and payment procedure.

Since physical delivery of all of these loans represents a heavy mechanical burden, to facilitate completion of transfer of the loans we are pleased to hand you herewith original loan documents and supporting documents in the sum aggregating \$96,070.11, for which we will be pleased to accept your trust receipt for payment. [14]

The remainder of the loans, to aggregate a total of \$7,500,000.00, is likewise available for immediate delivery to you, for which we request immediate delivery instructions and payment procedure.

Very truly yours,

MORTGAGE SERVICES  
OF NORFOLK, INC.,

By /s/ WARREN A. OTT,  
President.

/s/ WARREN A. OTT.

Duly verified.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Sept. 30, 1957. [15]

[Title of District Court and Cause.]

MOTION OF DEFENDANT HOME SAVINGS  
AND LOAN ASSOCIATION TO DISMISS  
AMENDED COMPLAINT

Defendant Home Savings and Loan Association moves the Court pursuant to Rule 12 of the Federal Rules of Civil Procedure to dismiss the Amended Complaint of Plaintiffs in the above matter on the grounds that such Amended Complaint fails to state a claim upon which relief can be granted and fails to join an indispensable party. This motion is based upon the pleadings and papers in the action and the Memorandum of Points and Authorities in Support of Defendant's Motion to Dismiss Amended Complaint attached hereto.

McKENNA AND FITTING,

By /s/ PAUL FITTING,

Attorneys for Defendant.

[Endorsed]: Filed Oct. 17, 1957. [18]

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[Title of District Court and Cause.]

MINUTES OF THE COURT

October 28, 1957

Present: Hon. Leon R. Yankwich, District Judge;

Counsel for Plaintiff:

Maurice Hindin, Esq.

Counsel for Defendant:

Paul Fitting, Esq.



Proceedings:

Hearing on defendant's motion to dismiss:

Both sides argue.

Court makes statement.

It Is Ordered that defendant's motion to dismiss be and hereby is granted and further that defendant attorney prepare formal order and judgment accordingly.

JOHN A. CHILDRESS,  
Clerk.

By /s/ L. CUNLIFFE,  
Deputy Clerk. [37]

In the United States District Court for the Southern District of California, Central Division

No. 548-57Y

WARREN A. OTT and MORTGAGE SERVICES OF NORFOLK, INC., a Corporation,

Plaintiffs,

vs.

HOME SAVINGS AND LOAN ASSOCIATION, a Corporation,

Defendant.

JUDGMENT OF DISMISSAL

On the 28th day of October, 1957, before the Honorable Leon R. Yankwich, in Court Room No. 7 of the above-captioned Court, there came on regularly

for hearing the Motion of Defendant Home Savings and Loan Association to Dismiss the Amended Complaint on the grounds that such Amended Complaint failed to state a claim upon which relief could be granted and failed to join an indispensable party; McKenna and Fitting by Paul Fitting appearing for Defendant Home Savings and Loan Association, and Hindin and Susman and Edwin J. Regan by Maurice J. Hindin appearing for Plaintiffs.

The Court having considered the pleadings, the motion, and memoranda filed in the cause, and having heard arguments of counsel, and being fully advised in the premises, granted the Motion of Defendant Home Savings and Loan Association to Dismiss the Amended Complaint on the grounds that [38] such Amended Complaint failed to state a claim upon which relief could be granted and failed to join an indispensable party in that Plaintiffs purported to act and to sue as assignees of a written agreement which was not assignable and hence had no rights in the alleged written agreement on which the action was based, in that Plaintiffs were not the real parties in interest and the real party in interest had not acted or sued under the alleged agreement, and in that a waiver or estoppel was not and could not be pleaded as against Defendant.

Now, Therefore, It Is Hereby Ordered, Adjudged, and Decreed:

1. That Plaintiffs' Amended Complaint be and the same is hereby dismissed; and

2. That this Action be and the same is hereby dismissed; and

3. That Defendant Home Savings and Loan Association recover its costs in the amount of \$.....

Dated: November 6, 1957.

/s/ LEON R. YANKWICH,  
Judge of the United States  
District Court.

Affidavit of Service by Mail attached.

[Lodged]: Nov. 1, 1957.

[Endorsed]: Filed Nov. 6, 1957. Entered Nov. 7, 1957. [39]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Warren A. Ott and Mortgage Services of Norfolk, Inc., a corporation, Plaintiffs above-named herein, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the Judgment of Dismissal made in the above-entitled action on or about the 28th day of October, 1957, and which said Judgment of Dismissal was thereafter entered on the docket of the court on or about November 7, 1957.

Dated: November 12, 1957.

HINDIN AND SUSMAN, and  
EDWIN J. REGAN,

By /s/ MAURICE J. HINDIN,  
Attorneys for Appellants, Warren A. Ott and Mort-  
gage Services of Norfolk, Inc., a Corporation.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Nov. 12, 1957. [41]

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[Title of District Court and Cause.]

### CERTIFICATE BY THE CLERK

I, John A. Childress, Clerk of the above-entitled Court, hereby certify that the items listed below constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled case:

A. The foregoing pages numbered 1 to 52, inclusive, containing the original:

Complaint, filed Apr. 30, 1957.

Minute Order of Court, 9/9/57.

Amended Complaint, filed Sept. 30, 1957.

Notice of Motion of Defendant Home Sav-  
ings and Loan Association to Dismiss Amended  
Complaint.

Minute Order of Court, 10/28/57.

Judgment of Dismissal.

Notice of Appeal.

Designation of Contents of Record on Appeal.

Statement of Points to be Relied Upon by Plaintiffs and Appellants.

Undertaking for Costs on Appeal.

Appellee's Designation of Additional Contents of Record on Appeal.

I further certify that my fee for preparing the foregoing record, amounting to \$1.60 has been paid by appellant.

Dated: November 22, 1957.

[Seal]                      JOHN A. CHILDRESS,  
Clerk.

By /s/ WM. A. WHITE,  
Deputy Clerk.

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[Endorsed]: No. 15804. United States Court of Appeals for the Ninth Circuit. Warren A. Ott and Mortgage Services of Norfolk, Inc., a Corporation, Appellants, vs. Home Savings & Loan Association, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed November 25, 1957.

Docketed: December 3, 1957.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

United States Court of Appeals  
for the Ninth Circuit

No. 15804

WARREN A. OTT and MORTGAGE SERVICES  
OF NORFOLK, INC., a Corporation,

Appellants,

vs.

HOME SAVINGS & LOAN ASSOCIATION, a  
Corporation,

Appellee.

STATEMENT OF POINTS UPON WHICH  
APPELLANTS INTEND TO RELY AND  
DESIGNATION OF THE RECORD

Pursuant to Rule 17(6), of Rules of this Court, Appellants herewith present a concise statement of the points on which they intend to rely, as follows:

1. That the District Court erred in granting the Defendant's Motion to dismiss the Plaintiffs' Amended Complaint herein.
2. That the District Court erred in entering a judgment of dismissal against the Plaintiffs and Appellants herein on the Amended Complaint.
3. That the District Court erred in holding in connection with the judgment of dismissal as a matter of law that Plaintiffs and Appellants herein



were not assignees of the agreement set forth and alleged in the Amended Complaint.

4. That the District Court erred in holding in connection with the judgment of dismissal that the aforesaid agreement set forth and alleged in the Amended Complaint was not assignable, and that the Plaintiffs and Appellants herein are not competent persons as assignees thereunder to maintain the action set forth in the Amended Complaint.

5. That the District Court erred in holding that the Plaintiffs and Appellants herein, as assignees, were not the real parties in interest.

6. That the District Court erred in holding in connection with the judgment of dismissal that a waiver or estoppel on the part of the Defendant and Appellee in recognizing and dealing with the Plaintiffs and Appellants herein was not and could not be pleaded as against the Defendant and Appellee in the said Amended Complaint.

7. That the District Court erred in denying to the Plaintiffs and Appellants herein the right to a trial by jury of issues of fact set forth in the Complaint, no evidence relative to such issues of fact having been offered or presented to the trial court.

8. That the District Court erred in holding as a matter of law that the Amended Complaint did not state facts sufficient upon which any relief could be afforded to the Plaintiffs and Appellants herein.

Appellants herein designate all of the record which is material to the consideration of the appeal, as follows:

1. The Amended Complaint together with Exhibits attached thereto.
2. Motion of Defendant, Home Savings & Loan Association, to dismiss the Amended Complaint.
3. Order of the Court granting Defendant's Motion to dismiss the Amended Complaint.
4. Judgment of Dismissal.
5. Plaintiffs' Notice of Appeal.
6. Statement of Points to be Relied upon by Plaintiffs' and Appellants.
7. Designation of Contents of Record on Appeal.

Dated: November 29, 1957.

/s/ MAURICE J. HINDIN,  
Attorney for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Dec. 2, 1957.



[Title of District Court and Cause.]

APPELLEE'S DESIGNATION OF ADDITIONAL PARTS OF THE RECORD ON APPEAL

Appellants having served upon Appellee their Statement of Points Upon Which Appellants Intend to Rely and Designation of the Record, pursuant to paragraph 6 of Rule 17 of the Rules of this Court Appellee hereby designates the following additional parts of the record which are material to the consideration of the Appeal herein:

1. Original Complaint filed April 30, 1957.
2. Minute Order of the Court of September 9, 1957.
3. Appellee's Designation of Additional Contents of Record on Appeal.

Dated: December 4, 1957.

McKENNA AND FITTING,

By /s/ PAUL FITTING,

Attorneys for Appellee.

[Endorsed]: Filed Dec. 6, 1957.

